



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

HB5762

Introduced 2/9/2010, by Rep. John E. Bradley

SYNOPSIS AS INTRODUCED:

| | |
|-----------------------|------------------------------|
| 720 ILCS 5/2-19.6 new | |
| 720 ILCS 5/9-1 | from Ch. 38, par. 9-1 |
| 720 ILCS 5/9-3 | from Ch. 38, par. 9-3 |
| 720 ILCS 5/12-21.6 | |
| 730 ILCS 5/5-5-3.2 | from Ch. 38, par. 1005-5-3.2 |

Amends the Criminal Code of 1961 and the Unified Code of Corrections. In relation to the offenses of first degree murder, involuntary manslaughter, and endangering the life or health of a child in which death of the victim was proximately caused by baby shaking, provides for increased penalties. Amends the Unified Code of Corrections. Provides that the court may impose an extended term sentence when a defendant is convicted of first degree murder, involuntary manslaughter, or endangering the life or health of a child resulting in the death of the child and the offense involves baby shaking and the trier of fact determined that baby shaking was the proximate cause of death of the victim of the offense. Defines "baby shaking".

LRB096 19636 RLC 35032 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Criminal Code of 1961 is amended by changing
5 Sections 9-1, 9-3, and 12-21.6 and by adding Section 2-19.6 as
6 follows:

7 (720 ILCS 5/2-19.6 new)

8 Sec. 2-19.6. Baby shaking. "Baby shaking" means the
9 vigorous shaking of an infant or a young child that may result
10 in bleeding inside the head and cause one or more of the
11 following conditions: irreversible brain damage; blindness,
12 retinal hemorrhage, or eye damage; cerebral palsy; hearing
13 loss; spinal cord injury, including paralysis; seizures;
14 learning disability; central nervous system injury; closed
15 head injury; rib fracture; subdural hematoma; or death.

16 (720 ILCS 5/9-1) (from Ch. 38, par. 9-1)

17 Sec. 9-1. First degree Murder - Death penalties -
18 Exceptions - Separate Hearings - Proof - Findings - Appellate
19 procedures - Reversals.

20 (a) A person who kills an individual without lawful
21 justification commits first degree murder if, in performing the
22 acts which cause the death:

1 (1) he either intends to kill or do great bodily harm
2 to that individual or another, or knows that such acts will
3 cause death to that individual or another; or

4 (2) he knows that such acts create a strong probability
5 of death or great bodily harm to that individual or
6 another; or

7 (3) he is attempting or committing a forcible felony
8 other than second degree murder.

9 (b) Aggravating Factors. A defendant who at the time of the
10 commission of the offense has attained the age of 18 or more
11 and who has been found guilty of first degree murder may be
12 sentenced to death if:

13 (1) the murdered individual was a peace officer or
14 fireman killed in the course of performing his official
15 duties, to prevent the performance of his official duties,
16 or in retaliation for performing his official duties, and
17 the defendant knew or should have known that the murdered
18 individual was a peace officer or fireman; or

19 (2) the murdered individual was an employee of an
20 institution or facility of the Department of Corrections,
21 or any similar local correctional agency, killed in the
22 course of performing his official duties, to prevent the
23 performance of his official duties, or in retaliation for
24 performing his official duties, or the murdered individual
25 was an inmate at such institution or facility and was
26 killed on the grounds thereof, or the murdered individual

1 was otherwise present in such institution or facility with
2 the knowledge and approval of the chief administrative
3 officer thereof; or

4 (3) the defendant has been convicted of murdering two
5 or more individuals under subsection (a) of this Section or
6 under any law of the United States or of any state which is
7 substantially similar to subsection (a) of this Section
8 regardless of whether the deaths occurred as the result of
9 the same act or of several related or unrelated acts so
10 long as the deaths were the result of either an intent to
11 kill more than one person or of separate acts which the
12 defendant knew would cause death or create a strong
13 probability of death or great bodily harm to the murdered
14 individual or another; or

15 (4) the murdered individual was killed as a result of
16 the hijacking of an airplane, train, ship, bus or other
17 public conveyance; or

18 (5) the defendant committed the murder pursuant to a
19 contract, agreement or understanding by which he was to
20 receive money or anything of value in return for committing
21 the murder or procured another to commit the murder for
22 money or anything of value; or

23 (6) the murdered individual was killed in the course of
24 another felony if:

25 (a) the murdered individual:

26 (i) was actually killed by the defendant, or

1 (ii) received physical injuries personally
2 inflicted by the defendant substantially
3 contemporaneously with physical injuries caused by
4 one or more persons for whose conduct the defendant
5 is legally accountable under Section 5-2 of this
6 Code, and the physical injuries inflicted by
7 either the defendant or the other person or persons
8 for whose conduct he is legally accountable caused
9 the death of the murdered individual; and

10 (b) in performing the acts which caused the death
11 of the murdered individual or which resulted in
12 physical injuries personally inflicted by the
13 defendant on the murdered individual under the
14 circumstances of subdivision (ii) of subparagraph (a)
15 of paragraph (6) of subsection (b) of this Section, the
16 defendant acted with the intent to kill the murdered
17 individual or with the knowledge that his acts created
18 a strong probability of death or great bodily harm to
19 the murdered individual or another; and

20 (c) the other felony was an inherently violent
21 crime or the attempt to commit an inherently violent
22 crime. In this subparagraph (c), "inherently violent
23 crime" includes, but is not limited to, armed robbery,
24 robbery, predatory criminal sexual assault of a child,
25 aggravated criminal sexual assault, aggravated
26 kidnapping, aggravated vehicular hijacking, aggravated

1 arson, aggravated stalking, residential burglary, and
2 home invasion; or

3 (7) the murdered individual was under 12 years of age
4 and the death resulted from exceptionally brutal or heinous
5 behavior indicative of wanton cruelty; or

6 (8) the defendant committed the murder with intent to
7 prevent the murdered individual from testifying or
8 participating in any criminal investigation or prosecution
9 or giving material assistance to the State in any
10 investigation or prosecution, either against the defendant
11 or another; or the defendant committed the murder because
12 the murdered individual was a witness in any prosecution or
13 gave material assistance to the State in any investigation
14 or prosecution, either against the defendant or another;
15 for purposes of this paragraph (8), "participating in any
16 criminal investigation or prosecution" is intended to
17 include those appearing in the proceedings in any capacity
18 such as trial judges, prosecutors, defense attorneys,
19 investigators, witnesses, or jurors; or

20 (9) the defendant, while committing an offense
21 punishable under Sections 401, 401.1, 401.2, 405, 405.2,
22 407 or 407.1 or subsection (b) of Section 404 of the
23 Illinois Controlled Substances Act, or while engaged in a
24 conspiracy or solicitation to commit such offense,
25 intentionally killed an individual or counseled,
26 commanded, induced, procured or caused the intentional

1 killing of the murdered individual; or

2 (10) the defendant was incarcerated in an institution
3 or facility of the Department of Corrections at the time of
4 the murder, and while committing an offense punishable as a
5 felony under Illinois law, or while engaged in a conspiracy
6 or solicitation to commit such offense, intentionally
7 killed an individual or counseled, commanded, induced,
8 procured or caused the intentional killing of the murdered
9 individual; or

10 (11) the murder was committed in a cold, calculated and
11 premeditated manner pursuant to a preconceived plan,
12 scheme or design to take a human life by unlawful means,
13 and the conduct of the defendant created a reasonable
14 expectation that the death of a human being would result
15 therefrom; or

16 (12) the murdered individual was an emergency medical
17 technician - ambulance, emergency medical technician -
18 intermediate, emergency medical technician - paramedic,
19 ambulance driver, or other medical assistance or first aid
20 personnel, employed by a municipality or other
21 governmental unit, killed in the course of performing his
22 official duties, to prevent the performance of his official
23 duties, or in retaliation for performing his official
24 duties, and the defendant knew or should have known that
25 the murdered individual was an emergency medical
26 technician - ambulance, emergency medical technician -

1 intermediate, emergency medical technician - paramedic,
2 ambulance driver, or other medical assistance or first aid
3 personnel; or

4 (13) the defendant was a principal administrator,
5 organizer, or leader of a calculated criminal drug
6 conspiracy consisting of a hierarchical position of
7 authority superior to that of all other members of the
8 conspiracy, and the defendant counseled, commanded,
9 induced, procured, or caused the intentional killing of the
10 murdered person; or

11 (14) the murder was intentional and involved the
12 infliction of torture. For the purpose of this Section
13 torture means the infliction of or subjection to extreme
14 physical pain, motivated by an intent to increase or
15 prolong the pain, suffering or agony of the victim; or

16 (15) the murder was committed as a result of the
17 intentional discharge of a firearm by the defendant from a
18 motor vehicle and the victim was not present within the
19 motor vehicle; or

20 (16) the murdered individual was 60 years of age or
21 older and the death resulted from exceptionally brutal or
22 heinous behavior indicative of wanton cruelty; or

23 (17) the murdered individual was a disabled person and
24 the defendant knew or should have known that the murdered
25 individual was disabled. For purposes of this paragraph
26 (17), "disabled person" means a person who suffers from a

1 permanent physical or mental impairment resulting from
2 disease, an injury, a functional disorder, or a congenital
3 condition that renders the person incapable of adequately
4 providing for his or her own health or personal care; or

5 (18) the murder was committed by reason of any person's
6 activity as a community policing volunteer or to prevent
7 any person from engaging in activity as a community
8 policing volunteer; or

9 (19) the murdered individual was subject to an order of
10 protection and the murder was committed by a person against
11 whom the same order of protection was issued under the
12 Illinois Domestic Violence Act of 1986; or

13 (20) the murdered individual was known by the defendant
14 to be a teacher or other person employed in any school and
15 the teacher or other employee is upon the grounds of a
16 school or grounds adjacent to a school, or is in any part
17 of a building used for school purposes; or

18 (21) the murder was committed by the defendant in
19 connection with or as a result of the offense of terrorism
20 as defined in Section 29D-14.9 of this Code; or -

21 (22) the murder was committed by the defendant and the
22 death of the victim was proximately caused by baby shaking.

23 (c) Consideration of factors in Aggravation and
24 Mitigation.

25 The court shall consider, or shall instruct the jury to
26 consider any aggravating and any mitigating factors which are

1 relevant to the imposition of the death penalty. Aggravating
2 factors may include but need not be limited to those factors
3 set forth in subsection (b). Mitigating factors may include but
4 need not be limited to the following:

5 (1) the defendant has no significant history of prior
6 criminal activity;

7 (2) the murder was committed while the defendant was
8 under the influence of extreme mental or emotional
9 disturbance, although not such as to constitute a defense
10 to prosecution;

11 (3) the murdered individual was a participant in the
12 defendant's homicidal conduct or consented to the
13 homicidal act;

14 (4) the defendant acted under the compulsion of threat
15 or menace of the imminent infliction of death or great
16 bodily harm;

17 (5) the defendant was not personally present during
18 commission of the act or acts causing death;

19 (6) the defendant's background includes a history of
20 extreme emotional or physical abuse;

21 (7) the defendant suffers from a reduced mental
22 capacity.

23 (d) Separate sentencing hearing.

24 Where requested by the State, the court shall conduct a
25 separate sentencing proceeding to determine the existence of
26 factors set forth in subsection (b) and to consider any

1 aggravating or mitigating factors as indicated in subsection
2 (c). The proceeding shall be conducted:

3 (1) before the jury that determined the defendant's
4 guilt; or

5 (2) before a jury impanelled for the purpose of the
6 proceeding if:

7 A. the defendant was convicted upon a plea of
8 guilty; or

9 B. the defendant was convicted after a trial before
10 the court sitting without a jury; or

11 C. the court for good cause shown discharges the
12 jury that determined the defendant's guilt; or

13 (3) before the court alone if the defendant waives a
14 jury for the separate proceeding.

15 (e) Evidence and Argument.

16 During the proceeding any information relevant to any of
17 the factors set forth in subsection (b) may be presented by
18 either the State or the defendant under the rules governing the
19 admission of evidence at criminal trials. Any information
20 relevant to any additional aggravating factors or any
21 mitigating factors indicated in subsection (c) may be presented
22 by the State or defendant regardless of its admissibility under
23 the rules governing the admission of evidence at criminal
24 trials. The State and the defendant shall be given fair
25 opportunity to rebut any information received at the hearing.

26 (f) Proof.

1 The burden of proof of establishing the existence of any of
2 the factors set forth in subsection (b) is on the State and
3 shall not be satisfied unless established beyond a reasonable
4 doubt.

5 (g) Procedure - Jury.

6 If at the separate sentencing proceeding the jury finds
7 that none of the factors set forth in subsection (b) exists,
8 the court shall sentence the defendant to a term of
9 imprisonment under Chapter V of the Unified Code of
10 Corrections. If there is a unanimous finding by the jury that
11 one or more of the factors set forth in subsection (b) exist,
12 the jury shall consider aggravating and mitigating factors as
13 instructed by the court and shall determine whether the
14 sentence of death shall be imposed. If the jury determines
15 unanimously, after weighing the factors in aggravation and
16 mitigation, that death is the appropriate sentence, the court
17 shall sentence the defendant to death. If the court does not
18 concur with the jury determination that death is the
19 appropriate sentence, the court shall set forth reasons in
20 writing including what facts or circumstances the court relied
21 upon, along with any relevant documents, that compelled the
22 court to non-concur with the sentence. This document and any
23 attachments shall be part of the record for appellate review.
24 The court shall be bound by the jury's sentencing
25 determination.

26 If after weighing the factors in aggravation and

1 mitigation, one or more jurors determines that death is not the
2 appropriate sentence, the court shall sentence the defendant to
3 a term of imprisonment under Chapter V of the Unified Code of
4 Corrections.

5 (h) Procedure - No Jury.

6 In a proceeding before the court alone, if the court finds
7 that none of the factors found in subsection (b) exists, the
8 court shall sentence the defendant to a term of imprisonment
9 under Chapter V of the Unified Code of Corrections.

10 If the Court determines that one or more of the factors set
11 forth in subsection (b) exists, the Court shall consider any
12 aggravating and mitigating factors as indicated in subsection
13 (c). If the Court determines, after weighing the factors in
14 aggravation and mitigation, that death is the appropriate
15 sentence, the Court shall sentence the defendant to death.

16 If the court finds that death is not the appropriate
17 sentence, the court shall sentence the defendant to a term of
18 imprisonment under Chapter V of the Unified Code of
19 Corrections.

20 (h-5) Decertification as a capital case.

21 In a case in which the defendant has been found guilty of
22 first degree murder by a judge or jury, or a case on remand for
23 resentencing, and the State seeks the death penalty as an
24 appropriate sentence, on the court's own motion or the written
25 motion of the defendant, the court may decertify the case as a
26 death penalty case if the court finds that the only evidence

1 supporting the defendant's conviction is the uncorroborated
2 testimony of an informant witness, as defined in Section 115-21
3 of the Code of Criminal Procedure of 1963, concerning the
4 confession or admission of the defendant or that the sole
5 evidence against the defendant is a single eyewitness or single
6 accomplice without any other corroborating evidence. If the
7 court decertifies the case as a capital case under either of
8 the grounds set forth above, the court shall issue a written
9 finding. The State may pursue its right to appeal the
10 decertification pursuant to Supreme Court Rule 604(a)(1). If
11 the court does not decertify the case as a capital case, the
12 matter shall proceed to the eligibility phase of the sentencing
13 hearing.

14 (i) Appellate Procedure.

15 The conviction and sentence of death shall be subject to
16 automatic review by the Supreme Court. Such review shall be in
17 accordance with rules promulgated by the Supreme Court. The
18 Illinois Supreme Court may overturn the death sentence, and
19 order the imposition of imprisonment under Chapter V of the
20 Unified Code of Corrections if the court finds that the death
21 sentence is fundamentally unjust as applied to the particular
22 case. If the Illinois Supreme Court finds that the death
23 sentence is fundamentally unjust as applied to the particular
24 case, independent of any procedural grounds for relief, the
25 Illinois Supreme Court shall issue a written opinion explaining
26 this finding.

1 (j) Disposition of reversed death sentence.

2 In the event that the death penalty in this Act is held to
3 be unconstitutional by the Supreme Court of the United States
4 or of the State of Illinois, any person convicted of first
5 degree murder shall be sentenced by the court to a term of
6 imprisonment under Chapter V of the Unified Code of
7 Corrections.

8 In the event that any death sentence pursuant to the
9 sentencing provisions of this Section is declared
10 unconstitutional by the Supreme Court of the United States or
11 of the State of Illinois, the court having jurisdiction over a
12 person previously sentenced to death shall cause the defendant
13 to be brought before the court, and the court shall sentence
14 the defendant to a term of imprisonment under Chapter V of the
15 Unified Code of Corrections.

16 (k) Guidelines for seeking the death penalty.

17 The Attorney General and State's Attorneys Association
18 shall consult on voluntary guidelines for procedures governing
19 whether or not to seek the death penalty. The guidelines do not
20 have the force of law and are only advisory in nature.

21 (Source: P.A. 96-710, eff. 1-1-10.)

22 (720 ILCS 5/9-3) (from Ch. 38, par. 9-3)

23 Sec. 9-3. Involuntary Manslaughter and Reckless Homicide.

24 (a) A person who unintentionally kills an individual
25 without lawful justification commits involuntary manslaughter

1 if his acts whether lawful or unlawful which cause the death
2 are such as are likely to cause death or great bodily harm to
3 some individual, and he performs them recklessly, except in
4 cases in which the cause of the death consists of the driving
5 of a motor vehicle or operating a snowmobile, all-terrain
6 vehicle, or watercraft, in which case the person commits
7 reckless homicide. A person commits reckless homicide if he or
8 she unintentionally kills an individual while driving a vehicle
9 and using an incline in a roadway, such as a railroad crossing,
10 bridge approach, or hill, to cause the vehicle to become
11 airborne.

12 (b) (Blank).

13 (c) (Blank).

14 (d) Sentence.

15 (1) Involuntary manslaughter is a Class 3 felony.
16 Involuntary manslaughter in which the death of the victim
17 was proximately caused by baby shaking is a Class 2 felony.

18 (2) Reckless homicide is a Class 3 felony.

19 (e) (Blank).

20 (e-2) Except as provided in subsection (e-3), in cases
21 involving reckless homicide in which the offense is committed
22 upon a public thoroughfare where children pass going to and
23 from school when a school crossing guard is performing official
24 duties, the penalty is a Class 2 felony, for which a person, if
25 sentenced to a term of imprisonment, shall be sentenced to a
26 term of not less than 3 years and not more than 14 years.

1 (e-3) In cases involving reckless homicide in which (i) the
2 offense is committed upon a public thoroughfare where children
3 pass going to and from school when a school crossing guard is
4 performing official duties and (ii) the defendant causes the
5 deaths of 2 or more persons as part of a single course of
6 conduct, the penalty is a Class 2 felony, for which a person,
7 if sentenced to a term of imprisonment, shall be sentenced to a
8 term of not less than 6 years and not more than 28 years.

9 (e-5) (Blank).

10 (e-7) Except as otherwise provided in subsection (e-8), in
11 cases involving reckless homicide in which the defendant: (1)
12 was driving in a construction or maintenance zone, as defined
13 in Section 11-605.1 of the Illinois Vehicle Code, or (2) was
14 operating a vehicle while failing or refusing to comply with
15 any lawful order or direction of any authorized police officer
16 or traffic control aide engaged in traffic control, the penalty
17 is a Class 2 felony, for which a person, if sentenced to a term
18 of imprisonment, shall be sentenced to a term of not less than
19 3 years and not more than 14 years.

20 (e-8) In cases involving reckless homicide in which the
21 defendant caused the deaths of 2 or more persons as part of a
22 single course of conduct and: (1) was driving in a construction
23 or maintenance zone, as defined in Section 11-605.1 of the
24 Illinois Vehicle Code, or (2) was operating a vehicle while
25 failing or refusing to comply with any lawful order or
26 direction of any authorized police officer or traffic control

1 aide engaged in traffic control, the penalty is a Class 2
2 felony, for which a person, if sentenced to a term of
3 imprisonment, shall be sentenced to a term of not less than 6
4 years and not more than 28 years.

5 (e-9) In cases involving reckless homicide in which the
6 defendant drove a vehicle and used an incline in a roadway,
7 such as a railroad crossing, bridge approach, or hill, to cause
8 the vehicle to become airborne, and caused the deaths of 2 or
9 more persons as part of a single course of conduct, the penalty
10 is a Class 2 felony.

11 (e-10) In cases involving involuntary manslaughter or
12 reckless homicide resulting in the death of a peace officer
13 killed in the performance of his or her duties as a peace
14 officer, the penalty is a Class 2 felony.

15 (e-11) In cases involving reckless homicide in which the
16 defendant unintentionally kills an individual while driving in
17 a posted school zone, as defined in Section 11-605 of the
18 Illinois Vehicle Code, while children are present or in a
19 construction or maintenance zone, as defined in Section
20 11-605.1 of the Illinois Vehicle Code, when construction or
21 maintenance workers are present the trier of fact may infer
22 that the defendant's actions were performed recklessly where he
23 or she was also either driving at a speed of more than 20 miles
24 per hour in excess of the posted speed limit or violating
25 Section 11-501 of the Illinois Vehicle Code.

26 (e-12) Except as otherwise provided in subsection (e-13),

1 in cases involving reckless homicide in which the offense was
2 committed as result of a violation of subsection (c) of Section
3 11-907 of the Illinois Vehicle Code, the penalty is a Class 2
4 felony, for which a person, if sentenced to a term of
5 imprisonment, shall be sentenced to a term of not less than 3
6 years and not more than 14 years.

7 (e-13) In cases involving reckless homicide in which the
8 offense was committed as result of a violation of subsection
9 (c) of Section 11-907 of the Illinois Vehicle Code and the
10 defendant caused the deaths of 2 or more persons as part of a
11 single course of conduct, the penalty is a Class 2 felony, for
12 which a person, if sentenced to a term of imprisonment, shall
13 be sentenced to a term of not less than 6 years and not more
14 than 28 years.

15 (e-14) In cases involving reckless homicide in which the
16 defendant unintentionally kills an individual, the trier of
17 fact may infer that the defendant's actions were performed
18 recklessly where he or she was also violating subsection (c) of
19 Section 11-907 of the Illinois Vehicle Code. The penalty for a
20 reckless homicide in which the driver also violated subsection
21 (c) of Section 11-907 of the Illinois Vehicle Code is a Class 2
22 felony, for which a person, if sentenced to a term of
23 imprisonment, shall be sentenced to a term of not less than 3
24 years and not more than 14 years.

25 (f) In cases involving involuntary manslaughter in which
26 the victim was a family or household member as defined in

1 paragraph (3) of Section 112A-3 of the Code of Criminal
2 Procedure of 1963, the penalty shall be a Class 2 felony, for
3 which a person if sentenced to a term of imprisonment, shall be
4 sentenced to a term of not less than 3 years and not more than
5 14 years.

6 (Source: P.A. 95-467, eff. 6-1-08; 95-551, eff. 6-1-08; 95-587,
7 eff. 6-1-08; 95-591, eff. 9-10-07; 95-803, eff. 1-1-09; 95-876,
8 eff. 8-21-08; 95-884, eff. 1-1-09; 96-328, eff. 8-11-09.)

9 (720 ILCS 5/12-21.6)

10 Sec. 12-21.6. Endangering the life or health of a child.

11 (a) It is unlawful for any person to willfully cause or
12 permit the life or health of a child under the age of 18 to be
13 endangered or to willfully cause or permit a child to be placed
14 in circumstances that endanger the child's life or health,
15 except that it is not unlawful for a person to relinquish a
16 child in accordance with the Abandoned Newborn Infant
17 Protection Act.

18 (b) There is a rebuttable presumption that a person
19 committed the offense if he or she left a child 6 years of age
20 or younger unattended in a motor vehicle for more than 10
21 minutes.

22 (c) "Unattended" means either: (i) not accompanied by a
23 person 14 years of age or older; or (ii) if accompanied by a
24 person 14 years of age or older, out of sight of that person.

25 (d) A violation of this Section is a Class A misdemeanor. A

1 second or subsequent violation of this Section is a Class 3
2 felony. A violation of this Section that is a proximate cause
3 of the death of the child is a Class 3 felony for which a
4 person, if sentenced to a term of imprisonment, shall be
5 sentenced to a term of not less than 2 years and not more than
6 10 years. A violation of this Section in which baby shaking was
7 the proximate cause of death of the child is a Class 2 felony
8 for which a person, if sentenced to a term of imprisonment,
9 shall be sentenced to a term of not less than 3 years and not
10 more than 14 years.

11 (Source: P.A. 92-408, eff. 8-17-01; 92-432, eff. 8-17-01;
12 92-515, eff. 6-1-02; 92-651, eff. 7-11-02.)

13 Section 10. The Unified Code of Corrections is amended by
14 changing Section 5-5-3.2 as follows:

15 (730 ILCS 5/5-5-3.2) (from Ch. 38, par. 1005-5-3.2)

16 (Text of Section after amendment by P.A. 96-339)

17 Sec. 5-5-3.2. Factors in Aggravation.

18 (a) The following factors shall be accorded weight in favor
19 of imposing a term of imprisonment or may be considered by the
20 court as reasons to impose a more severe sentence under Section
21 5-8-1 or Article 4.5 of Chapter V:

22 (1) the defendant's conduct caused or threatened
23 serious harm;

24 (2) the defendant received compensation for committing

1 the offense;

2 (3) the defendant has a history of prior delinquency or
3 criminal activity;

4 (4) the defendant, by the duties of his office or by
5 his position, was obliged to prevent the particular offense
6 committed or to bring the offenders committing it to
7 justice;

8 (5) the defendant held public office at the time of the
9 offense, and the offense related to the conduct of that
10 office;

11 (6) the defendant utilized his professional reputation
12 or position in the community to commit the offense, or to
13 afford him an easier means of committing it;

14 (7) the sentence is necessary to deter others from
15 committing the same crime;

16 (8) the defendant committed the offense against a
17 person 60 years of age or older or such person's property;

18 (9) the defendant committed the offense against a
19 person who is physically handicapped or such person's
20 property;

21 (10) by reason of another individual's actual or
22 perceived race, color, creed, religion, ancestry, gender,
23 sexual orientation, physical or mental disability, or
24 national origin, the defendant committed the offense
25 against (i) the person or property of that individual; (ii)
26 the person or property of a person who has an association

1 with, is married to, or has a friendship with the other
2 individual; or (iii) the person or property of a relative
3 (by blood or marriage) of a person described in clause (i)
4 or (ii). For the purposes of this Section, "sexual
5 orientation" means heterosexuality, homosexuality, or
6 bisexuality;

7 (11) the offense took place in a place of worship or on
8 the grounds of a place of worship, immediately prior to,
9 during or immediately following worship services. For
10 purposes of this subparagraph, "place of worship" shall
11 mean any church, synagogue or other building, structure or
12 place used primarily for religious worship;

13 (12) the defendant was convicted of a felony committed
14 while he was released on bail or his own recognizance
15 pending trial for a prior felony and was convicted of such
16 prior felony, or the defendant was convicted of a felony
17 committed while he was serving a period of probation,
18 conditional discharge, or mandatory supervised release
19 under subsection (d) of Section 5-8-1 for a prior felony;

20 (13) the defendant committed or attempted to commit a
21 felony while he was wearing a bulletproof vest. For the
22 purposes of this paragraph (13), a bulletproof vest is any
23 device which is designed for the purpose of protecting the
24 wearer from bullets, shot or other lethal projectiles;

25 (14) the defendant held a position of trust or
26 supervision such as, but not limited to, family member as

1 defined in Section 12-12 of the Criminal Code of 1961,
2 teacher, scout leader, baby sitter, or day care worker, in
3 relation to a victim under 18 years of age, and the
4 defendant committed an offense in violation of Section
5 11-6, 11-11, 11-15.1, 11-19.1, 11-19.2, 11-20.1, 12-13,
6 12-14, 12-14.1, 12-15 or 12-16 of the Criminal Code of 1961
7 against that victim;

8 (15) the defendant committed an offense related to the
9 activities of an organized gang. For the purposes of this
10 factor, "organized gang" has the meaning ascribed to it in
11 Section 10 of the Streetgang Terrorism Omnibus Prevention
12 Act;

13 (16) the defendant committed an offense in violation of
14 one of the following Sections while in a school, regardless
15 of the time of day or time of year; on any conveyance
16 owned, leased, or contracted by a school to transport
17 students to or from school or a school related activity; on
18 the real property of a school; or on a public way within
19 1,000 feet of the real property comprising any school:
20 Section 10-1, 10-2, 10-5, 11-15.1, 11-17.1, 11-18.1,
21 11-19.1, 11-19.2, 12-2, 12-4, 12-4.1, 12-4.2, 12-4.3,
22 12-6, 12-6.1, 12-13, 12-14, 12-14.1, 12-15, 12-16, 18-2, or
23 33A-2 of the Criminal Code of 1961;

24 (16.5) the defendant committed an offense in violation
25 of one of the following Sections while in a day care
26 center, regardless of the time of day or time of year; on

1 the real property of a day care center, regardless of the
2 time of day or time of year; or on a public way within
3 1,000 feet of the real property comprising any day care
4 center, regardless of the time of day or time of year:
5 Section 10-1, 10-2, 10-5, 11-15.1, 11-17.1, 11-18.1,
6 11-19.1, 11-19.2, 12-2, 12-4, 12-4.1, 12-4.2, 12-4.3,
7 12-6, 12-6.1, 12-13, 12-14, 12-14.1, 12-15, 12-16, 18-2, or
8 33A-2 of the Criminal Code of 1961;

9 (17) the defendant committed the offense by reason of
10 any person's activity as a community policing volunteer or
11 to prevent any person from engaging in activity as a
12 community policing volunteer. For the purpose of this
13 Section, "community policing volunteer" has the meaning
14 ascribed to it in Section 2-3.5 of the Criminal Code of
15 1961;

16 (18) the defendant committed the offense in a nursing
17 home or on the real property comprising a nursing home. For
18 the purposes of this paragraph (18), "nursing home" means a
19 skilled nursing or intermediate long term care facility
20 that is subject to license by the Illinois Department of
21 Public Health under the Nursing Home Care Act or the MR/DD
22 Community Care Act;

23 (19) the defendant was a federally licensed firearm
24 dealer and was previously convicted of a violation of
25 subsection (a) of Section 3 of the Firearm Owners
26 Identification Card Act and has now committed either a

1 felony violation of the Firearm Owners Identification Card
2 Act or an act of armed violence while armed with a firearm;

3 (20) the defendant (i) committed the offense of
4 reckless homicide under Section 9-3 of the Criminal Code of
5 1961 or the offense of driving under the influence of
6 alcohol, other drug or drugs, intoxicating compound or
7 compounds or any combination thereof under Section 11-501
8 of the Illinois Vehicle Code or a similar provision of a
9 local ordinance and (ii) was operating a motor vehicle in
10 excess of 20 miles per hour over the posted speed limit as
11 provided in Article VI of Chapter 11 of the Illinois
12 Vehicle Code;

13 (21) the defendant (i) committed the offense of
14 reckless driving or aggravated reckless driving under
15 Section 11-503 of the Illinois Vehicle Code and (ii) was
16 operating a motor vehicle in excess of 20 miles per hour
17 over the posted speed limit as provided in Article VI of
18 Chapter 11 of the Illinois Vehicle Code;

19 (22) the defendant committed the offense against a
20 person that the defendant knew, or reasonably should have
21 known, was a member of the Armed Forces of the United
22 States serving on active duty. For purposes of this clause
23 (22), the term "Armed Forces" means any of the Armed Forces
24 of the United States, including a member of any reserve
25 component thereof or National Guard unit called to active
26 duty;

1 (23) the defendant committed the offense against a
2 person who was elderly, disabled, or infirm by taking
3 advantage of a family or fiduciary relationship with the
4 elderly, disabled, or infirm person; ~~or~~

5 (24) the defendant committed any offense under Section
6 11-20.1 of the Criminal Code of 1961 and possessed 100 or
7 more images; ~~or~~

8 (25) the defendant committed the offense while the
9 defendant or the victim was in a train, bus, or other
10 vehicle used for public transportation; or.

11 (26) ~~(25)~~ the defendant committed the offense of child
12 pornography or aggravated child pornography, specifically
13 including paragraph (1), (2), (3), (4), (5), or (7) of
14 subsection (a) of Section 11-20.1 of the Criminal Code of
15 1961 where a child engaged in, solicited for, depicted in,
16 or posed in any act of sexual penetration or bound,
17 fettered, or subject to sadistic, masochistic, or
18 sadomasochistic abuse in a sexual context and specifically
19 including paragraph (1), (2), (3), (4), (5), or (7) of
20 subsection (a) of Section 11-20.3 of the Criminal Code of
21 1961 where a child engaged in, solicited for, depicted in,
22 or posed in any act of sexual penetration or bound,
23 fettered, or subject to sadistic, masochistic, or
24 sadomasochistic abuse in a sexual context.

25 For the purposes of this Section:

26 "School" is defined as a public or private elementary or

1 secondary school, community college, college, or university.

2 "Day care center" means a public or private State certified
3 and licensed day care center as defined in Section 2.09 of the
4 Child Care Act of 1969 that displays a sign in plain view
5 stating that the property is a day care center.

6 "Public transportation" means the transportation or
7 conveyance of persons by means available to the general public,
8 and includes paratransit services.

9 (b) The following factors, related to all felonies, may be
10 considered by the court as reasons to impose an extended term
11 sentence under Section 5-8-2 upon any offender:

12 (1) When a defendant is convicted of any felony, after
13 having been previously convicted in Illinois or any other
14 jurisdiction of the same or similar class felony or greater
15 class felony, when such conviction has occurred within 10
16 years after the previous conviction, excluding time spent
17 in custody, and such charges are separately brought and
18 tried and arise out of different series of acts; or

19 (2) When a defendant is convicted of any felony and the
20 court finds that the offense was accompanied by
21 exceptionally brutal or heinous behavior indicative of
22 wanton cruelty; or

23 (3) When a defendant is convicted of any felony
24 committed against:

25 (i) a person under 12 years of age at the time of
26 the offense or such person's property;

1 (ii) a person 60 years of age or older at the time
2 of the offense or such person's property; or

3 (iii) a person physically handicapped at the time
4 of the offense or such person's property; or

5 (4) When a defendant is convicted of any felony and the
6 offense involved any of the following types of specific
7 misconduct committed as part of a ceremony, rite,
8 initiation, observance, performance, practice or activity
9 of any actual or ostensible religious, fraternal, or social
10 group:

11 (i) the brutalizing or torturing of humans or
12 animals;

13 (ii) the theft of human corpses;

14 (iii) the kidnapping of humans;

15 (iv) the desecration of any cemetery, religious,
16 fraternal, business, governmental, educational, or
17 other building or property; or

18 (v) ritualized abuse of a child; or

19 (5) When a defendant is convicted of a felony other
20 than conspiracy and the court finds that the felony was
21 committed under an agreement with 2 or more other persons
22 to commit that offense and the defendant, with respect to
23 the other individuals, occupied a position of organizer,
24 supervisor, financier, or any other position of management
25 or leadership, and the court further finds that the felony
26 committed was related to or in furtherance of the criminal

1 activities of an organized gang or was motivated by the
2 defendant's leadership in an organized gang; or

3 (6) When a defendant is convicted of an offense
4 committed while using a firearm with a laser sight attached
5 to it. For purposes of this paragraph, "laser sight" has
6 the meaning ascribed to it in Section 24.6-5 of the
7 Criminal Code of 1961; or

8 (7) When a defendant who was at least 17 years of age
9 at the time of the commission of the offense is convicted
10 of a felony and has been previously adjudicated a
11 delinquent minor under the Juvenile Court Act of 1987 for
12 an act that if committed by an adult would be a Class X or
13 Class 1 felony when the conviction has occurred within 10
14 years after the previous adjudication, excluding time
15 spent in custody; or

16 (8) When a defendant commits any felony and the
17 defendant used, possessed, exercised control over, or
18 otherwise directed an animal to assault a law enforcement
19 officer engaged in the execution of his or her official
20 duties or in furtherance of the criminal activities of an
21 organized gang in which the defendant is engaged.

22 (c) The following factors may be considered by the court as
23 reasons to impose an extended term sentence under Section 5-8-2
24 (730 ILCS 5/5-8-2) upon any offender for the listed offenses:

25 (1) When a defendant is convicted of first degree
26 murder, after having been previously convicted in Illinois

1 of any offense listed under paragraph (c)(2) of Section
2 5-5-3 (730 ILCS 5/5-5-3), when that conviction has occurred
3 within 10 years after the previous conviction, excluding
4 time spent in custody, and the charges are separately
5 brought and tried and arise out of different series of
6 acts.

7 (1.5) When a defendant is convicted of first degree
8 murder, after having been previously convicted of domestic
9 battery (720 ILCS 5/12-3.2) or aggravated domestic battery
10 (720 ILCS 5/12-3.3) committed on the same victim or after
11 having been previously convicted of violation of an order
12 of protection (720 ILCS 5/12-30) in which the same victim
13 was the protected person.

14 (2) When a defendant is convicted of voluntary
15 manslaughter, second degree murder, involuntary
16 manslaughter, or reckless homicide in which the defendant
17 has been convicted of causing the death of more than one
18 individual.

19 (3) When a defendant is convicted of aggravated
20 criminal sexual assault or criminal sexual assault, when
21 there is a finding that aggravated criminal sexual assault
22 or criminal sexual assault was also committed on the same
23 victim by one or more other individuals, and the defendant
24 voluntarily participated in the crime with the knowledge of
25 the participation of the others in the crime, and the
26 commission of the crime was part of a single course of

1 conduct during which there was no substantial change in the
2 nature of the criminal objective.

3 (4) If the victim was under 18 years of age at the time
4 of the commission of the offense, when a defendant is
5 convicted of aggravated criminal sexual assault or
6 predatory criminal sexual assault of a child under
7 subsection (a)(1) of Section 12-14.1 of the Criminal Code
8 of 1961 (720 ILCS 5/12-14.1).

9 (5) When a defendant is convicted of a felony violation
10 of Section 24-1 of the Criminal Code of 1961 (720 ILCS
11 5/24-1) and there is a finding that the defendant is a
12 member of an organized gang.

13 (6) When a defendant was convicted of unlawful use of
14 weapons under Section 24-1 of the Criminal Code of 1961
15 (720 ILCS 5/24-1) for possessing a weapon that is not
16 readily distinguishable as one of the weapons enumerated in
17 Section 24-1 of the Criminal Code of 1961 (720 ILCS
18 5/24-1).

19 (7) When a defendant is convicted of an offense
20 involving the illegal manufacture of a controlled
21 substance under Section 401 of the Illinois Controlled
22 Substances Act (720 ILCS 570/401), the illegal manufacture
23 of methamphetamine under Section 25 of the Methamphetamine
24 Control and Community Protection Act (720 ILCS 646/25), or
25 the illegal possession of explosives and an emergency
26 response officer in the performance of his or her duties is

1 killed or injured at the scene of the offense while
2 responding to the emergency caused by the commission of the
3 offense. In this paragraph, "emergency" means a situation
4 in which a person's life, health, or safety is in jeopardy;
5 and "emergency response officer" means a peace officer,
6 community policing volunteer, fireman, emergency medical
7 technician-ambulance, emergency medical
8 technician-intermediate, emergency medical
9 technician-paramedic, ambulance driver, other medical
10 assistance or first aid personnel, or hospital emergency
11 room personnel.

12 (8) When a defendant is convicted of first degree
13 murder under Section 9-1 of the Criminal Code of 1961,
14 involuntary manslaughter under Section 9-3 of the Criminal
15 Code of 1961, or endangering the life or health of a child
16 under Section 12-21.6 resulting in the death of the child
17 and the offense involves baby shaking and the trier of fact
18 determined that baby shaking was the proximate cause of
19 death of the victim of the offense.

20 (d) For the purposes of this Section, "organized gang" has
21 the meaning ascribed to it in Section 10 of the Illinois
22 Streetgang Terrorism Omnibus Prevention Act; and "baby
23 shaking" means the vigorous shaking of an infant or a young
24 child that may result in bleeding inside the head and cause one
25 or more of the following conditions: irreversible brain damage;
26 blindness, retinal hemorrhage, or eye damage; cerebral palsy;

1 hearing loss; spinal cord injury, including paralysis;
2 seizures; learning disability; central nervous system injury;
3 closed head injury; rib fracture; subdural hematoma; or death.

4 (Source: P.A. 95-85, eff. 1-1-08; 95-362, eff. 1-1-08; 95-569,
5 eff. 6-1-08; 95-876, eff. 8-21-08; 95-942, eff. 1-1-09;
6 95-1052, eff. 7-1-09; 96-41, eff. 1-1-10; 96-292, eff. 1-1-10;
7 96-328, eff. 8-11-09; 96-339, eff. 7-1-10; revised 9-25-09.)